

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Norfolk Division

BIONTECH SE, *et al.*,

Plaintiffs / Counter Defendants,

v.

CUREVAC SE,

Defendant / Counter Claimant,

and

CUREVAC MANUFACTURING  
GMBH,

Counter Claimant.

Case No. 2:23-cv-222

**ORDER**

Before the Court is an unopposed report and recommendation prepared by the Honorable Douglas E. Miller. ECF No. 308. The report and recommendation will be **ADOPTED**, Acuitas Therapeutics, Inc.’s Combined Motion to Intervene, Sever and Stay (ECF No. 138) will be **DENIED AS MOOT**, and the current scheduling order shall be **MODIFIED** as described herein.

On November 14, 2024, Actuas Therapeutics, Inc. (“Acuitas”) filed a Combined Motion to Intervene, Stay and Sever. ECF No. 138. In an April 12, 2024 Report and Recommendation (“R&R”), Judge Miller granted intervention and recommended this Court stay the entire action pending the outcome of parallel litigation between Acuitas and Defendant CureVac SE (“CureVac”). ECF No. 258 at 1.

On April 25, 2024, CureVac filed a Notice of Settlement, notifying the Court that it had resolved its dispute with Acuitas. ECF No. 262. The following day, it filed an objection to the R&R, expressing that the settlement would result in withdrawal of several claims in the instant litigation and that Acuitas could be dismissed from this case. ECF No. 265.<sup>1</sup> Because of those changed circumstances, the Court returned this matter to Judge Miller with instructions to provide updated recommendations regarding the litigation schedule. ECF No. 302 (citing Fed. R. Civ. P. 72(b)(3)).

Judge Miller filed his Revised Report and Recommendation on Severance and Stay (“Revised R&R”) on June 11, 2024. ECF No. 308. In it, he recommends that the Court (1) deny Actuas’s motion to stay and sever as moot and (2) adopt a modified schedule for discovery and expert disclosure. *Id.* at 4.

The Revised R&R advises the parties of their rights to object to Judge Miller’s findings and recommendations and explains that failure to timely object will result in a waiver of appeal from a judgment of this Court based on such findings and recommendations. ECF No. 308 at 5–6 (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F. 2d 91 (4th Cir. 1984)). The time to file an objection has expired, and neither party objected to the Revised R&R.

In the absence of a specific written objection, this Court may adopt a Magistrate Judge’s recommendations without conducting a *de novo* review, unless

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<sup>1</sup> Acuitas was dismissed on June 14, 2024. ECF No. 314.

the recommendations are clearly erroneous or contrary to law. Fed. R. Civ. P. 72(b)(2); *see Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982) (citations omitted); *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

The Court has reviewed Judge Miller's findings and recommendations and found no clear error. Accordingly, the Revised Report and Recommendation on Severance and Stay (ECF No. 308) is **ADOPTED**.

Acuitas Therapeutics, Inc.'s Combined Motion to Intervene, Sever and Stay (ECF No. 138) is **DENIED AS MOOT**.

The following schedule shall govern proceedings in this matter:

Fact discovery closes, including all fact depositions	July 26, 2024
Identification of proposed expert witnesses	August 9, 2024
Opening expert reports	August 28, 2024
Rebuttal expert reports	October 1, 2024
Sur-rebuttal expert reports	October 22, 2024
Completion of all discovery, including depositions taken for presentation in evidence in lieu of the appearance of a witness at trial	November 27, 2024
Dispositive and <i>Daubert</i> motions	December 20, 2024
Response to dispositive and <i>Daubert</i> motions	January 6, 2025
Pretrial Disclosures	January 6, 2025
Reply to dispositive and <i>Daubert</i> motions	January 17, 2025
All non-dispositive motions	January 17, 2025
Objections to pretrial disclosures and plaintiff to distribute proposed final draft of proposed Final Pretrial Order	January 22, 2025
Opposition brief to non-dispositive motions	January 29, 2025
Attorneys' conference	January 29, 2025
Settlement Conference	Before January 31, 2025
Proposed Final Pretrial Order	January 31, 2025
<i>Voir dire</i> and jury instructions	February 6, 2025
Opposition to proposed final jury instructions	February 11, 2025
Final Pretrial Conference	February 14, 2025
Pretrial briefs	February 24, 2025 (Not later than five business days before trial)

Three sets of pre-marked, indexed copies of each party's exhibits	February 28, 2025 (Not later than one business day before trial)
Three-week jury trial begins	March 3, 2025

All other directions in the Amended Scheduling Order shall still apply.

The Clerk is **DIRECTED** to send a copy of this Order to all counsel of record.

**IT IS SO ORDERED.**



/s/

Jamar K. Walker  
United States District Judge

Norfolk, Virginia  
June 27, 2024